

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO**

ANDREW MUNGER, on behalf of
himself and all others similarly situated,

Plaintiffs,

vs.

MATCO TOOLS CORPORATION,

Defendant.

) CASE NO. 5:23-CV-00337
)
)

) JUDGE DAVID A. RUIZ
)
)

) **JOINT MOTION TO CONSOLIDATE**
) **AND STAY RESPONSIVE PLEADING**
) **DEADLINES**
)

TOBY CLARKSON GARDNER and
KESTON LEWIS, on behalf of
themselves and all others similarly
situated,

Plaintiffs,

vs.

MATCO TOOLS CORPORATION,

Defendant.

) CASE NO. 5:23-CV-00383
)
)
)
)

) JUDGE DAVID A. RUIZ
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WILLIAM FADUIE, on behalf of)	CASE NO. 5:23-CV-00535
himself and all others similarly situated,)	
)	
)	
)	
Plaintiffs,)	JUDGE DAVID A. RUIZ
)	
)	
vs.)	
)	
)	
MATCO TOOLS CORPORATION,)	
)	
Defendant.)	

Pursuant to Fed. R. Civ. P. 42(a), the Parties hereby move for an order consolidating the following three related cases presently pending before this Court: *Andrew Munger v. Matco Tools Corporation*, Case No. 5:23-CV-00337; *Toby Clarkson Gardner, et al. v. Matco Tools Corporation*, Case No. 5:23-CV-00383; and *William Faduie v. Matco Tools Corporation*, Case No: 5:23-CV-00535, and for a brief stay in all three cases pending the Court’s ruling on this Motion.

In support of this motion, plaintiffs Andrew Munger, Toby Clarkson Gardner, Keston Lewis, and William Faduie (collectively “Plaintiffs”), and defendant Matco Tools Corporation (“Matco”) (together, the “Parties”) hereby state as follows:

1. The Plaintiffs in the *Munger*, *Gardner* and *Faduie* actions filed putative class action complaints against Matco Tools Corporation based on a data security incident that Matco announced on or around January 26, 2023. All three complaints raise claims of negligence and breach of implied contract against Matco, and seek damages, injunctive relief, and certification of a class of individuals impacted by the security incident.

2. The plaintiff in *Munger* filed his Complaint against Matco in the United States District Court for the Northern District of Ohio on February 22, 2023. The *Munger* action was assigned to Judge David A. Ruiz. Matco was served with the *Munger* Complaint on February 24, 2023.

3. The plaintiffs in *Gardner* filed their Complaint against Matco in the United States District Court for the Northern District of Ohio on February 27, 2023. The *Gardner* action was originally assigned to Judge Patricia A. Gaughan. The Court reassigned the *Gardner* action to Judge David A. Ruiz on March 7, 2023. Matco was served with the *Gardner* Complaint on February 28, 2023.

4. The plaintiff in *Faduie* filed his Complaint against Matco in the Summit County Court of Common Pleas on February 2, 2022. Matco was served with the Complaint on February 15, 2022. Matco timely removed the *Faduie* action to the United States District Court for the Northern District of Ohio on March 15, 2023. The *Faduie* action was originally assigned to Judge John R. Adams. The Court reassigned the *Faduie* action to Judge David A. Ruiz on March 20, 2023.

5. On March 21, 2023, the Court ordered plaintiffs in *Munger*, *Gardner* and *Faduie* to meet and confer regarding consolidation and to file a motion for consolidation on or before April 11, 2023, with a proposed schedule for filing an amended consolidated complaint and responses to the amended consolidated complaint.

6. The Parties in all three cases have agreed that consolidation would achieve the most efficient resolution of this matter. Thus, the Parties now seek consolidation of the related *Munger*, *Gardner* and *Faduie* actions presently pending before Judge David A. Ruiz.

7. The *Munger*, *Gardner* and *Faduie* actions are largely the same. Indeed, they include similar factual allegations, raise most of the same claims (e.g., negligence, breach of implied contract), and seek the same relief on behalf of a proposed class of individuals impacted by the data security incident (e.g., actual damages, injunctive relief, fees, class certification, etc.).

8. Because all three recently-filed actions are based on the same data security incident, are against the same defendant, assert similar facts and claims, involve similar legal issues, and seek similar relief on behalf of a proposed class of individuals impacted by the data security incident, the parties believe the three cases should be consolidated. The Federal Rules provide the Court with broad discretion to consolidate actions that involve a common question of fact and law. *See* Fed. R. Civ. P. 42(a); *F.T.C. v. Integration Media, Inc.*, 2009 WL 2602190, at *1 (N.D. Ohio Aug. 24, 2009) (“The Court has broad discretion to consolidate cases, taking into consideration judicial economy and the risks of separate, inconsistent adjudications. . . . Here, common questions of law and fact permeate the two cases, and the efficient use of judicial resources supports consolidation.”); *Plagens v. Deckard*, 2021 WL 3284265, at *4 (N.D. Ohio Aug. 2, 2021) (“The Court agrees that consolidation of these actions is appropriate. Both raise common questions of law and fact, and consolidation will serve judicial economy, mitigate delay, and avoid duplicative costs.”); *Eliason v. Gentek Building Prods., Inc.*, 2012 WL 12929559, at *2 (N.D. Ohio Sept. 6, 2012) (consolidating four actions and ordering the parties to file a single consolidated complaint because “the benefits of a consolidated complaint outweigh any potential prejudice” and the cases are all “based on substantially similar allegations” and “arise from a common core factual predicate and share common legal issues”). Here, all three actions involve the same

questions of law and fact and consolidation and the filing of a consolidated amended complaint would provide the most efficient management of these cases.

9. The Parties believe that consolidation is the most efficient use of the Court's and Parties' resources and respectfully request that the Court issue an order consolidating all three actions. (See Exhibit A for a Proposed Order).

10. If the Court grants the Parties' Joint Motion to Consolidate, the Parties suggest the following briefing schedule for filing and responding to the consolidated amended complaint:

Deadline for Plaintiffs to file a consolidated amended complaint	30 days after the Court enters an order granting the parties' Joint Motion to Consolidate
Deadline for Defendant to file a response to the consolidated amended complaint	60 days after Plaintiffs file the consolidated amended complaint

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on the 11th day of April, 2023, the foregoing motion was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Lisa M. Ghannoum
One of the Attorneys for
Defendant